



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 6102-99

4 February 2000

CAPT [REDACTED] USMC

Dear Captain [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has amended your contested fitness report for 1 January to 15 July 1994 to reflect that you were the subject of commendatory correspondence.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 23 September 1999, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division, dated 29 October 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in finding that the contested fitness report, as amended, should stand. They found that your chances for selection by the Fiscal Year 2000 Major Selection Board would not have been appreciably enhanced, had your record reflected, as it should have, that you had been recommended for the Navy and Marine Corps Achievement Medal during the reporting period in question. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6102-99

IN REPLY REFER TO:

1610

MMER/PERB

SEP 23 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED], [REDACTED] USMC

Ref: (a) Captain [REDACTED] DD Form 149 of 17 May 99
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 14 September 1999 to consider Captain [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 940101 to 940715 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is factually inaccurate owing to the omission of significant events. He also believes the report is unjust in that Captain [REDACTED] allegedly contradicts himself regarding two significant pieces of official correspondence in connection with the petitioner's performance. To support his appeal, the petitioner provides a copy of the fitness report, a letter from [REDACTED], a copy of the Navy and Marine Corps Achievement Medal, and a copy of his Master Brief Sheet.

3. In its proceedings, the PERB concluded that, with one minor exception, the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Notwithstanding the petitioner's own statement and that provided by Captain [REDACTED], the Board finds nothing of a substantive or documentary nature to prove the report is anything other than a true and accurate reflection of the petitioner's demonstrated performance **during this finite period**. That he was the recipient of other, more laudatory performance evaluations from the same Reporting Senior does not somehow call into the validity of this particular appraisal. In this regard, the Board observes that a Reporting Senior is under no obligation to grade subsequent reports in the same manner as the previous ones were graded. There is no presumption of consistency -- only the individual by his or her steadfast performance can guarantee that consistency.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED], [REDACTED] USMC

b. The Board is not persuaded or convinced that the petitioner did not receive some form of "counseling" during the reporting period. The inherent relationship between the petitioner and the Reporting Senior (i.e., Platoon Commander/Company Commander) would have certainly ensured some type of performance feedback. In addition, we note that Captain [REDACTED] had been the petitioner's Reporting Senior on the previous five fitness reports (totalling 21 months), thereby adding to the Board's presumption that an on-going dialogue had been in effect.

c. The petitioner is correct that Item 17a should have been marked "yes", reflecting a recommendation for receipt of the Navy and Marine Corps Achievement Medal. The Board does not, however, find this administrative oversight to warrant removal of the report. Instead, the Board is directing the preparation and insertion onto the performance ("P") section of the petitioner's official military personnel file, an appropriately worded Memorandum for the Record indicating the foregoing.

d. As a final matter, and contrary to what the petitioner may believe, the Reporting Senior was under no obligation to explain or document any of the ratings assigned in Section B.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Captain [REDACTED] official military record. The limited corrective action identified in subparagraph 3c is considered sufficient.

5. The case is forwarded for final action.

[REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6102-99

IN REPLY REFER TO:

1600
MMAA-4
29 Oct 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN [REDACTED] D
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
Captain [REDACTED] USMC
of 26 Oct 99

1. Recommend disapproval of Captain [REDACTED] implied request for removal of his failure of selection.

2. Per the reference, we reviewed Captain [REDACTED] record and petition. He failed selection on the FY00 USMC Major Selection Board. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Transfer fitness report of 940101 to 940715. Captain [REDACTED] implies a request for removal of his failure of selection.

3. In our opinion, the petitioned report does present competitive concern to the record. However, Captain [REDACTED] has other areas of competitive concern in his record that contributed to his failure of selection.

a. **Section B Marks.** The record reflects less competitive Section B marks in Administrative Duties, Tactical Handling of Troops, Attention to Duty, Cooperation, Judgment, Leadership, Personal Relations, and Economy of Management.

b. **Overall Value and Distribution.** Captain [REDACTED] overall Value and Distribution marks are less competitive. He has eleven officers ranked above him and eleven below, placing him in the middle of the pack.

c. **Transfer Report of 970702 to 950808.** While a student at Amphibious Warfare School, Captain [REDACTED] receives less competitive Section B marks in Cooperation and Personal Relations. The Section C contains the growing comment, "took strides towards becoming a MAGTF officer rather than an infantry officer."

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]
[REDACTED] USMC

4. In summary, we believe Captain [REDACTED] petition is without merit. His record received a substantially complete and fair evaluation by the Board. Had the petitioned report been removed by the PERB, his record would not have been significantly improved. Captain [REDACTED] record has other areas of competitive concern beyond the petitioned report that contributed to his failure of selection. Therefore, we recommend disapproval of Captain [REDACTED] implied request for removal of his failure of selection.

5. Point of contact is [REDACTED], ([REDACTED]) [REDACTED]

[REDACTED]
Lieutenant Colonel, U.S. Marine Corps
Head, Officer Career Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division